

INTERNET AND COPYRIGHT LAW

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With three teenage sons, I know a little about disputed ownership. Some days, the most often heard phrase around the house is, "It's mine you little (fill in the noun or adjective); get your hands off of it."

I used to intervene and try to settle such arguments; then, I realized my sons were as big as me, plus they were younger, stronger, and much quicker. I needed a new plan. So now, while they're wrestling around, I just grab the contested object and hide it. Thus I became a Barenaked Ladies fan after getting a couple of the band's CDs that way.

Protecting property on the Internet is far more complex. That's because it is much easier to steal content from a Web site than it is to get a CD from teenagers taking part in a death match. Because content on the Internet is in digital format, it can easily be copied with no apparent way to tell if it is the original or a copy -- the quality remains the same.

One positive note for owners of Web content is that the Internet is subject to copyright law, which provides some protection for the owners and their intellectual content.

What is Copyright Law?

Copyrights have been around in one form or another since the creation of the Constitution, when the forefathers sought to encourage creators to feel rewarded enough to continue coming up with new works and to encourage new people to join the fray.

The need for copyright protection has long been apparent. Written works could always be copied and later photocopied. Records (for the young, they were round things that had music on them), tapes, cassettes, CDs, TV shows, and movies could also be duplicated, so protection for the artists or creators has always been needed.

As the Internet has become more prevalent, the need for copyright protection there has also become a necessity. Today, copyright law has been adapted to protect Internet items, just as it has been adapted through the years to protect various other new mediums. It protects original work or work that is fixed in a tangible medium, meaning it is written, typed, or recorded. But because it was not designed specifically for the Internet, in some areas copyright law on the Internet can be as clear as mud.

Technically, when a user visits a Web page, the computer puts the page into RAM memory, and then when it is viewed online, some browsers put it into the computer's cache so that it will load quicker the next time the page is visited by that viewer. Thus, the entirety of the page is copied, which is technically a violation of copyright law. There is, however, an out. That is because by placing the page on the Internet, there is an implied consent by the owner for people to view that page.

That is splitting hairs, but if people do not want the page to be seen, they could leave it off the Internet or password protect each page. That, however, defeats the purpose of the Internet, making it basically empty and mindless -- a lot like reality TV.

The problem is that people can easily copy the words verbatim, steal the photos, or copy the design as it is. Those actions, good folks, are violations of copyright law and just not nice to do. They are also frequently hard to track down.

When a Web page is created, its contents are immediately copyrighted, whether or not it carries a copyright notice. The copyright can belong to the creator or, in the case of a Web site that is created for someone, it can belong to the client. It is a good move to include a copyright notice in the form of: copyright or ©, the date of creation, and the owner. It is an even smarter move to register that copyright with the U.S. Copyright Office. That costs about \$30, but it is well worth it if the intellectual property means much to you.

Such registration provides the owner with some legal recourse not otherwise available, such as the ability to seek civil damages, attorney fees generated while collecting those damages, and restraining orders and injunctions to prevent further use.

If it isn't registered, a copyright is much more difficult to enforce because the burden of proof is on the owner to show the amount of damages, something almost impossible to do.

Copyrights in the U.S. last the lifetime of the author plus 70 years. If there are more than one creator, the copyright lasts 70 years after the last one is deceased. The exclusive rights given to the author by copyright include the right to:

- * Reproduce the work
- * Sell or otherwise distribute the work for money
- * Perform the work publicly
- * Prepare derivative works
- * Display the work publicly.

Profit is not the only measurement used to determine copyright infringement, and there are many reasons people would not want their sites raided. The fact is that stealing things from a Web site it is illegal regardless of the reason.

Thus, if you create it, you own it. If you didn't create it, keep your hands off of it unless the author has given you specific, written permission. It's that simple.

Not everything put on the Internet is afforded the protection of copyright. Titles, names, short parts of works, slogans, ideas, methods, or concepts are fair game, although they may be covered by Trademark law which would protect them.

There is also a thing called "Fair Use," that is not a copyright infringement. "Fair Use" includes items for use in nonprofit educational purposes, if the amount of the work used is minimal (such as a pull quote from a story), or the degree to which the use of the work will have on its commercial value.

The problem is that one person's view of "Fair Use" can be vastly different from another person's view, and there is no assurance that the courts will agree with you should you find yourself in such a situation.

Fair use was created to primarily allow parody, commentary, news reporting, and education. Notice those are all written situations. Chances of getting away with taking a screen capture of Anna Kournikova on TV and posting it on a Web site while calling it "Fair Use" are virtually nil. Makes you wonder how there legally can be thousands of pictures of her on hundreds of Web sites, doesn't it?

Other items not covered would include information that is common property without original authorship, such as calendars, height and weight charts, tape measures and rulers. However, if you create a fancy calendar design, it can be copyrighted.

What About Public Domain?

Many people think that because something is on the Internet, it is in the "public domain," and therefore freely usable by the public. That is false. That would be true only if the author has denounced ownership or died more than 70 years ago.

For example, you go to a Web site that offers graphics for use on your Web site at no charge. That gives you permission to use a graphic on your site, but you cannot include that graphic in a collection for sale to other people. The graphic is not in the public domain.

Generally speaking, if something has been around for centuries and does not appear to belong to anyone, it is said to be in the public domain. If it has a copyright label affixed to it, no argument is going to convince a legal mind that it is open to public use.

What Can They Steal From Me?

While cruising the Internet, someone sees a site and admires the layout. It is very easy to see the source code, copy and paste it into a new document and use it for their own. It is also illegal because even HTML coding is covered by copyright law. The same is true for JavaScripts and Java applets.

But what if cruising the 'Net you see a page that looks just like one you earlier created, but it clearly was created before you did yours? Are you guilty of copyright infringement? No, because it just so happens the pages looked alike but were created independently, not because of theft on anyone's part. It is considered innocent infringement at most. However, one should not make the mistake of copying a page and then claiming innocent infringement, if they want to be assured of protection.

Thus, in addition to the obvious photos and words, the coding or programming involved in the Internet can be copyrighted, as can novels, e-mail, music, software, screenplays, Usenet messages, or short stories that appear.

Some think that if they change a few words, they are not guilty of plagiarism or copyright infringement. That, of course, is false. The idea cannot be copyrighted, but the words can, so to use that information and avoid infringement, it would be necessary to extensively rewrite the copy in your own words.

Otherwise, it is no different than making a bootleg copy of a performer's music CD or putting a different cover on a book, changing the byline, and publishing it for profit. You have to figure someone will notice.

While anyone can link to a page, it is only good manners to first get permission from a Web site owner to do so. That is called Netiquette. However, most people do not do that, and in most cases there is not really any harm.

In fact, linking is probably the safest way to go to bring attention to another person's page, while the use of frames (and opening links in them) is perhaps the most risky.

Even though linking to a site within your frames may not have any financial bearing on the site being displayed, copyright infringement can include the damage created by associating the one site with the other.

For example, if I had a porn site set up in frames, and I linked to a page of a famous person who is not involved in the porn industry, the appearance created by having that person's page appear on my site can be considered damaging. At that point, should the famous person wish to pursue the matter, it could get expensive for me. And that doesn't include the fact my wife would kill me for having a porn site.

Another issue involving frames is, using the above example, that if the famous person's site is used by you on a page containing advertising in another frame, it can appear that the famous person is offering an endorsement of the advertised product. That is a no-no.

Yet another problem with frames is that people may think the page of that famous person belongs to the owner of the Web site using the frames. Book 'em, Dano (a pull quote). That, too, is a no-no.

In these cases, we've discussed home pages. But what about the other pages on a site? Should a site owner wish to keep people from linking to interior pages of their site, it must be done so through technical means. Otherwise, copyright law won't prevent people from viewing the pages, although printing and copying and stealing images and words fall under the law in other areas.

I've Been Infringed. What To Do?

I was infringed once, or at least my Web site was stolen in its entirety. While doing a search to see who was linking to my site, I discovered that one gentleman had lifted the entire thing and placed it on his site.

After consulting with my legal staff -- two Shar-pei dogs who can barely see because of their wrinkles -- I e-mailed the infringer and told him that he had two hours to remove the material. Should he fail to do so, I wrote, my legal staff would be contacting him and that its bite was much worse than its bark. I copied the e-mail to the infringer's Internet service provider.

The gentleman e-mailed me back, saying that he had only taken the site because he liked it so well and meant it as a form of flattery.

Until then, I did not know Shar-peis could even grin, not to mention roll across the floor in hysterical laughter. They still can't slap their back knees without falling on their chins, but even that has some entertainment value. I e-mailed the guy back and told him he had one hour and 45 minutes left, again copying the e-mail to his ISP.

Former President Bill Clinton signed into law in 1998 the Digital Millennium Copyright Act that addressed several areas of the Internet. One area limited ISPs from copyright liability for merely transmitting information over the Internet, unless they are aware that it is stolen property, but it does require them to remove it when it is made known and proven to them.

That is probably why, at that point, his ISP stepped in and took the site down immediately, apologizing profusely. I called off the legal dogs, so to speak.

Dealing directly with the perpetrator and the ISP is perhaps the easiest way to settle such ownership disputes, but copyright law does afford owners the right to seek civil damages up to \$125,000. Stealing such material is a crime. If you can document the theft, you may have a basis for pursuit of legal solutions in Federal District Court (see Necessary Disclaimer above), starting by contacting local law enforcement authorities.

Summary

Original material is copyrighted the second it hits your hard drive. It just takes a few seconds to put a copyright notice on a Web site, thereby eliminating one excuse people can use to delay settlement, so there is no reason for anyone who has original content on their site to not have it labeled.

If the content is truly valuable, then by all means spend the \$30 it takes to get the copyright registered. Whether it is one page or several, it still costs just \$30, and that will give you legal recourse if it becomes necessary.

If you wish to use other people's materials, you need to get permission, pay royalties, or whatever else is necessary to obtain the right to use it. Without that permission, using the material is little more than theft.

It is easy to look around and see all of the Kournikova pictures, the results of hackers, pirated software on the Internet, and think if they can get away with it, why can't I? The problem is that if you are the one caught, you may soon be wrestling around on the floor with the legal establishment. Now, who do you think will win?

Necessary Disclaimer: *This article is not intended as legal advice -- I'm quite certain my legal expertise could get a person put to death for spitting on the sidewalk in Texas, or even a state where lethal injection isn't considered a party drink. This article is, however, designed to give readers a clue of how they can protect their intellectual property or avoid putting themselves in the line of legal fire. Beyond that, hire a lawyer.*